



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 17, 2003

Ms. Mary E. Reveles
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2003-0370

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175228.

The Fort Bend County Sheriff's Office (the "sheriff") received a written request for all information pertaining to the requestor and a second named individual. You state that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* that is of no legitimate concern to the public. *Id.* at 683-85.

In asking for records pertaining to all arrests or criminal complaints about the second named individual, the requestor, in essence, is asking the sheriff to compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, in this instance, the sheriff must withhold on privacy grounds all records of alleged criminal violations, to the extent those records exist, in which the second named individual is identified as either an arrestee or a suspect.

Section 552.101 also excepts from disclosure information made confidential by statute. One of the offense reports you submitted to this office as being responsive to the records request, Report No. 02-6786, concerns an investigation of alleged child abuse. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the sheriff has adopted that would permit access to this record. Because the information at issue pertains to an investigation of possible child abuse, this office concludes it is confidential pursuant to section 261.201 of the Family Code. Thus, the sheriff must withhold Report No. 02-6786 in its entirety pursuant to section 552.101 of the Government Code.

You next contend that Report No. 02-6698 is excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

You state that Report No. 02-6698 relates to a pending criminal investigation or possible prosecution. In this instance, however, you have provided this office with conflicting information, and we are unable to conclude that section 552.108(a)(1) is applicable to this offense report. Offense Report No. 02-6698 indicates on its face that the case was closed with no criminal charges being filed. However, you state that this investigation is ongoing. In light of the fact that the records before us indicate that this investigation is closed, it is not clear to this office whether the sheriff’s investigation is actually ongoing. We cannot reconcile this apparent conflict. Consequently, the sheriff may not withhold Offense Report

No. 02-6698 from the requestor pursuant to section 552.108(a)(1) of the Government Code. Because you have raised no other exception to required public disclosure, we conclude that the sheriff must release this offense report in its entirety, with the following exceptions.

We first note that Offense Report No. 02-6698 contains an individual's social security number. Social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), but only if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the sheriff to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the sheriff should ensure that this number was not obtained or maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

We additionally note that Offense Report No. 02-6698 contains the complainant's driver's license number. Section 552.130(a)(1) of the Government Code requires the sheriff to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the sheriff must withhold the complainant's Texas driver's license number pursuant to section 552.130(a)(1) of the Government Code.

In summary, the sheriff must withhold in their entirety all offense reports in which the second named individual is named as a suspect or arrestee, to the extent those records exist. The sheriff must also withhold in its entirety Offense Report No. 02-6786 in accordance with section 261.201 of the Family Code. Offense Report No. 02-6698 must be released, but the sheriff must withhold from this report the social security number, if made confidential under federal law, and the complainant's Texas driver's license number.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a long horizontal flourish extending to the right.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/lmt

Ref: ID# 175228

Enc: Submitted documents

c: Ms. Ida Johnson
P. O. Box 404
Fresno, Texas 77545
(w/o enclosures)